commissioner, and provided that no broker should maintain an action for a commission without alleging and proving a state license under the act. Cal. Stats. 1919, ch. 605, §§ 3, 20. (Act held constitutional in Riley v. Chambers (1919) 181 Cal. 589, 185 Pac. 855, 8 A. L. R. 418.). The act went into effect July 27, 1919, but no licenses were issued until about January 1, 1920. It was held in *Beebe v. Kistler* that the failure of the plaintiff to plead possession of a license prevented his recovery. (1921) 35 Cal. App. Dec. 92, 199 Pac. 537. (Hearing denied by Supreme Court, June 30, 1921). In *Merzoian v. Papazian* (1921, 35 Cal. App. Dec. 357, 199 Pac. 826. Hearing denied by Supreme Court, Aug. 4, 1921) the opposite conclusion was reached, the decision being based on the impossibility of conformance to the statute, and without reference to Beebe v. Kistler. In both cases the sale was made after the act became effective but before licenses were issued.

It is submitted that the case which permits recovery is the correct one. That a broker should be denied the right to recover his commission because he has not procured a license which it is impossible to get is hardly a desirable state of affairs. The commissioner is now functioning and licenses are readily procurable, but it is to be hoped that if any more cases arise from his period of quiescence the decision in the Merzoian case will be followed.

PRINCIPAL AND AGENT: IMPLIED WARRANTY IN FAVOR OF SELLING AGENT THAT GOODS ARE SUITABLE FOR RESALE—A written contract of agency authorized the selling agent of a tractor manufacturer to warrant to purchasers, in substance, that the tractors were well made of good material, and durable if used with proper care. This contract contained no provision in favor of the agent about the quality of tractors to be supplied. *Held,* that, because the agent was authorized to make this express warranty to purchasers, an "implied warranty" arose in favor of the agent that the tractors were "reasonably fit for the general purpose" for which the agent was authorized to sell them. *Bullock Tractor Company v. Knapp* (C. C. A. 9th Circ. 1921) 270 Fed. 379, (Certiorari denied, 41 Sup. Ct. Rep. 536).

The court found an analogy in implied warranties in the sale of goods. It was further held that the manufacturer's failure to supply tractors corresponding to the "implied warranty", was a breach thereof, for which the agent could recover damages from the manufacturer. A search has failed to reveal any former case, excepting possibly Wood etc. Company v. Thayer (1888) 50 Hun. 516, 3 N. Y. Supp. 465, cited in the opinion, which has thus extended to contracts of agency the doctrines of implied warranty prevailing in the law of sales. Warranty is a much abused word and its extension to the field of principal and agent is open to question. The rights of the agent against the principal depend on the express and implied terms of their contract. It may be that in any particular case one of those implied terms is that the goods which the agent sells shall comply with the warranty which goes with them to the buyer, but this does not necessarily follow. It may well be under all the circumstances that the agent in making the warranty knew the facts as fully as the principal and was acting as much for his own interests. In such a case it would be unjust to shift the loss to the principal by automatically turning all the express and implied warranties running to the buyer into implied warranties for the benefit of the agent.